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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 150626556-5556-01]

RIN 0648-BF20

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; State Waters Exemption

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to allow an exemption for Northern Gulf of Maine federally permitted vessels with state-waters permits issued from the State of Maine to continue fishing in the Maine state-waters portion of the Northern Gulf of Maine management area once NMFS has announced that the Federal total allowable catch has been fully harvested in a given year. Maine requested this exemption as part of the Scallop State Water Exemption Program, which specifies that a state may be eligible for a state waters exemption to specific Federal regulations if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Atlantic Sea Scallop Fishery Management Plan. The regulations further state that the Regional Administrator, Greater

Atlantic Regional Fisheries Office, NMFS, shall determine if a state meets that criteria and shall authorize the exemption for such state by publishing a rule in the **Federal Register**. Based on the information that Maine has submitted, NMFS has preliminarily determined that Maine qualifies for this exemption and that this exemption would not have an impact on the effectiveness of Federal management measures for the scallop fishery overall or within the Northern Gulf of Maine management area.

DATES: Comments must be received by 5 p.m., local time, on [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Documents supporting this action, including the State of Maine's (Maine) request for the exemption and Framework Adjustment 26 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) are available upon request from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

You may submit comments on this document, identified by NOAA-NMFS-2015-0079 by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0079*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Maine State Waters Exemption Program."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978-281-9244.

SUPPLEMENTARY INFORMATION:

Background

The Scallop State Waters Exemption Program (Program) has been in place since 1994. The purpose of the Program is to allow Federal permit holders to harvest scallops in the state waters fishery on a more equitable basis where Federal and state laws are inconsistent, while ensuring they continue to submit catch and effort data to NMFS. The Program specifies that a state with a scallop fishery may be eligible for state waters exemptions if it has a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. Under the Program, if NMFS determines that a state is found to be eligible, federally permitted scallop vessels fishing in state waters may be exempted from the following Federal scallop regulations: Limited access scallop vessels may fish in state waters outside of scallop days-at-sea, limited access and limited access general category (LAGC)

individual fishing quota vessels may be exempt from Federal gear and possession limit restrictions, and vessels with selected scallop permit types may be exempt from specific regulations pertaining to the Northern Gulf of Maine (NGOM) management area.

The exemption from specific regulations pertaining to the NGOM management area was recently added to the Program via Framework 26 to the Scallop FMP, implemented on May 1, 2015, which specifically allows states to apply for a specific exemption that would enable some scallop vessels to continue to fish in state waters within the NGOM management area once the Federal NGOM total allowable catch (TAC) is reached. Any state interested in applying for this exemption must identify the scallop-permitted vessels that would be subject to the exemption (i.e., limited access, LAGC individual fishing quota, LAGC incidental, or LAGC NGOM). However, vessels would not be able to fish for scallops in the Federal portion of the NGOM once the TAC is harvested.

Maine currently has the state waters exemptions from gear and effort control restrictions for vessels issued Federal scallop permits and Maine commercial scallop licenses that are fishing exclusively in Maine waters (74 FR 37952; July 30, 2009). Following the implementation of Framework 26, NMFS received a request from the state to expand its current exemptions to allow federally NGOM-permitted vessels with Maine state-waters permits to fish in the Maine state-waters portion of the NGOM management area once we project the Federal NGOM TAC to be fully harvested. This provision would allow those vessels to continue to fish in state waters along with state permitted vessels without Federal permits. Although the 70,000-lb (31,751-kg) NGOM Federal TAC has never been exceeded since the NGOM management area was created in 2008, there is now a higher potential that the TAC will be reached because scallop effort has

increased in the NGOM in recent years as the stock has improved, particularly in state waters. Without this exemption, these federally permitted vessels would be prevented from participating in Maine's state water fishery if the Federal NGOM TAC is reached. State-only permitted scallop vessels are able to continue to fish in state waters after the Federal closure.

Based on the information Maine submitted regarding its scallop conservation program, NMFS has preliminarily determined that the state qualifies for the NGOM state waters exemption under the Scallop FMP. As required by the scallop fishery regulations, exemptions can only be granted if the state's scallop fishery would not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. Maine's scallop fishery restrictions are as restrictive as Federal scallop fishing regulations. Maine's scallop fishery became limited access in 2008. Fishing time and effort on scallop trips are limited by possession limits and a short season. The fishery is open only 70 days of the year, between December and March. Maine manages the fishery in its waters by a rotational management plan and employs a trigger mechanism that closes a given area if 30 to 40 percent of the harvestable biomass has been removed. Maine has issued 545 commercial dragger scallop licenses, in addition to 82 commercial dive licenses. In 2014, 438 of these licenses were active (i.e., landed scallops at least once). There are currently 40 federally NGOM-permitted vessels also issued Maine commercial scallop licenses, and 12 of them are currently active in the state fishery. If these federally permitted vessels were allowed to continue fishing for scallops in Maine state waters after the NGOM TAC is harvested, Maine's restrictive scallop fishery regulations would still limit mortality and effort. Allowing for this NGOM exemption would have no impact on the effectiveness of Federal management measures for the scallop fishery overall or within the

NGOM management area because the NGOM Federal TAC is set based only on the portion of the resource in Federal waters.

Maine is the only state that has requested a NGOM closure exemption. Maine requested that this exemption apply only to vessels with Federal NGOM permits. As such, all other federally permitted scallop vessel categories would be prohibited from retaining, possessing, and landing scallops from within the NGOM management area, in both Federal and state waters, once the NGOM hard TAC is fully harvested.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The ability for states with territorial waters located within the NGOM management area to apply for this specific exemption was included into the Scallop FMP through Framework 26, which was implemented in May 2015. That action included a Final Regulatory Flexibility Analyses (FRFA) that analyzed the economic impacts of this NGOM exemption on small entities.

This action would impact up to 40 NGOM-permitted vessels home ported in Maine. Although only 12 of these vessels are currently active, more vessels could enter the fishery at any time and benefit from the exemption. Based on available information, NMFS has determined that all 40 NGOM-permitted vessels that would be impacted by this rule are small entities under the Small Business Administration's size standards because they are all engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$5.5 million if fishing for shellfish (NAICS code: 114112).

This exemption is expected to have positive impacts on the revenues of applicable scallop vessels and positive impacts on the overall economic benefits from the scallop resource in state waters. Should the Federal NGOM fishery close, this exemption will result in moderate to high positive impacts on scallop revenue in Maine because NGOM scallopers will be able to continue fishing for scallops in state waters. This proposed action would not have any additional impacts on federally permitted vessels beyond what was analyzed in Framework 26 and would not create any additional economic impacts that were not considered in that action's FRFA.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 30, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.54, paragraph (a)(4) is revised to read as follows:

§ 648.54 State waters exemption.

(a) * * *

(4) The Regional Administrator has determined that the State of Maine has a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section. In addition, a vessel issued a Federal Northern Gulf of Maine permit fishing in State of Maine waters may fish under the State of Maine state waters exemption specified in paragraph (d) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section.

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